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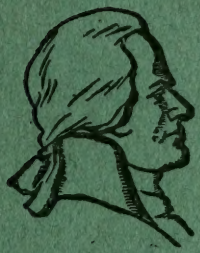
THE BUSINESS MAN AND THE LAW

By ALFRED BICKNELL



MODERN BUSINESS
LECTURE No. 24

ALEXANDER HAMILTON INSTITUTE
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The Business Man and the Law

By

ALFRED BICKNELL

Of Bain, Bicknell, Macdonell & Gordon
Barristers and Solicitors

One of a Series of Modern Business Lectures
Especially Prepared for the
Alexander Hamilton Institute

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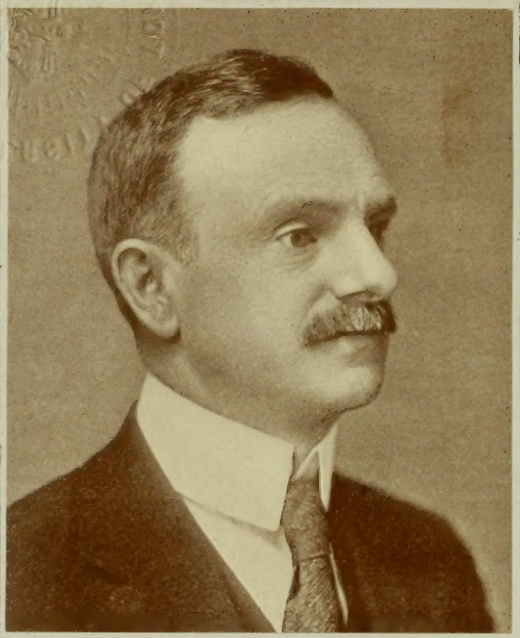

ALFRED BICKNELL

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Alfred Bicknell was born June 26, 1870, in London, England. When he was but two years of age, his father brought the family to this country. The boy received his early education in Hamilton, Ontario. He was called to the bar in 1892. For ten years, he practised law in Woodstock, where he took an important part in municipal affairs. He then transferred his activities to Toronto and has continuously been identified there with prominent legal affairs. He is now an active member of the firm of Bain, Bicknell, Macdonell and Gordon.

He has been sponsor for many legal suggestions and has assisted in the preparation of a number of Acts which now make up an important part of Canadian Law. He has always been a student of Commercial Law and is recognized as an authority in that phase of the law. He is now interested in the preparation of various legal publications.

Mr. Bicknell's knowledge of Commercial Law has brought him into contact with many business enterprises in an advisory capacity. In a number of cases, his advice has been regarded as so important that he has been made a director in the companies.

Mr. Bicknell believes that every busy professional or business man must derive his energy from outdoor sports. He is an enthusiastic yachtsman and devotee of the links. He holds membership in the Royal Canadian Yacht Club and the Mississauga and Summit Golf Clubs.

NOTE:—This Lecture which is based upon the author's ripe experience in his special field, should be read in the light of the Modern Business Text, and should be studied as an authoritative message from the field of business activity.

The Business Man and the Law

By

Alfred Bicknell

What is known as Law is a set, or rather sets, of rules and regulations intended to govern the proper conduct and carrying-on of the affairs of life.

These rules and regulations are the product of ages, some being founded upon the Law of Moses. Certain principles are laid down in what is known as the "Common Law," while others are set forth in legislative enactments called "Statutes." The latter may merely declare what is or has been the Law, or may make entirely new regulations for the conduct or carrying-on of certain transactions.

Growth of Statute Law

Legislative bodies in these times seem to feel that the people may consider that they are not diligent unless the Legislature enacts each session a large number of new Statutes. Nothing could be further from the truth. It should be a cardinal principle of every Legislature to make as few changes as possible in the existing state of affairs, and each amendment made should be of such importance as not to involve too much expense in reprinting the act as amended,

instead of inserting a few amending words here and there thruout. If such were done business men would not have such a laborious task in ascertaining the existing Statute Law on a particular subject. Legislatures thruout the country, and, in fact, thru the whole world, should endeavor to have uniform codes of Laws.

As matters exist at the present time what is Statute Law in one State of the Union or one Province of the Dominion, may be entirely different in another State or Province, notwithstanding that it is only a few yards across the border. The Bills of Exchange Act is codified in a number of the States of the Union, as well as in England and Canada. The Criminal Law is codified in the latter and the law relating to "Sales of Goods" is codified in England. Thus it is seen that a commencement has been made along this line, but it reminds us of a story by Artemus Ward, in which he refers to a railway having been built across the continent—"It is seven miles in length, but it breaks the monotony of the journey."

Common Law and Statute Law

The point was well illustrated many years ago by one of the foremost lawyers in England. He was asked if he knew all the Statute Law. "No", he replied, "I should be ashamed to confess that I did not know the Common Law, but I should be equally ashamed to confess that I knew *all* the Statute Law." Is it, therefore, any wonder why it is necessary for men to spend many, many years of their lives in

endeavoring to master the law and in specializing in some particular branch? Business men spend years of time and anxious thought in specializing for their various branches of business and have no spare moments to study such a complex and intricate subject as law. "A little knowledge is a dangerous thing" applies equally to law. Some men put off consulting a physician until they are very ill. That is very costly and often fatal to the patient. They sometimes put it off until an undertaker is required. It is equally true when a business man puts off consulting a competent lawyer. A business man when he sees "breakers ahead" is often saved much loss, worry and expense by timely consultation with an attorney or solicitor.

On the other hand, the law should not be considered as a matter wholly for experts or that it is abstruse and remote from the affairs of daily life. Nothing could be more false. Law is, after all, only the formulated rules of human conduct, a code of procedure and interpretation which is the outgrowth of the daily affairs of men. Nor is it, as some believe, the function of the law to intervene in men's affairs except when it becomes necessary. Men are free to do what they will in the conduct of their business. If their intentions are clear and unmistakable to all concerned, the obligation rests upon all to carry them out. But suppose they are not clear. Suppose that of two parties to a contract one thinks it should be carried out in one way, the other in another, and they cannot agree. Now in such a case it is the function

of the courts and the law to decide what they did mean. It decides it in the main by a consideration of what other men have meant in similar circumstances. To that we may say that the law establishes rules of normal conduct. In a great many cases these rules when stated carry conviction thru their inherent reasonableness. In other cases it appears to be not so much the need of the particular rule adopted as the need of some rule, whatever it may be, that is decisive.

Law Touches Business Closely

In this view of the law it is clear that so far from being a thing apart, it permeates our daily life. Our actions, great and small, are hedged about with legal rights and obligations. This is especially true in the conduct of business. Unconsciously, perhaps, the business man is shaping his affairs in accordance with legal rules, sometimes unwittingly in violation of them. This inadvertence may bring him to a sudden halt when he fancied he was proceeding in perfect serenity. That the generalization has not been overdrawn can readily be seen from a consideration of a number of concrete cases.

Many years ago, in the reign of King Charles II, there was passed in England what was called a Statute for the Prevention of Frauds and Perjuries. It recognized the frailties of human nature and that the memory of man was not faultless; that in certain transactions it was unwise to rely upon the memory of witnesses, very often concerning matters that hap-

pened years before. Consequently it was thought wise to require that certain dealings should be evidenced by a writing, signed by the party against whom it was desired to be enforced. Many of the laws of England were adopted by the United States in 1776, while the Statute Laws of England in force in 1791 were subsequently adopted in Canada. Among these laws is the one referred to, which is still in force in Canada and in many States of the Union. The following typical cases depict the importance of this statute, illustrating clearly the manner in which it affects our daily business transactions:

Lease

B. gave to A. a verbal lease of a farm for four years. After six months they quarreled over some repairs, which A. claimed B. had agreed to make to the barn. B. then told A. to move. A. found that a lease for more than three years is only a lease at will, unless in writing and signed by the lessor or his agent appointed in writing.

Guarantees

A Cobalt lawyer wrote to a mining man in Buffalo to send him a check for an account for groceries furnished a defunct mining company and the payment of which the lawyer stated had been guaranteed by the Buffalo mining man. The latter consulted his attorney and told him he had no recollection of ever guaranteeing the account. The attorney then requested the Cobalt lawyer to furnish a copy of the guarantee. No written guarantee was in existence; consequently, none was forthcoming, and the Buffalo mining man never heard of it again. A guarantee for the debt or default of another requires a writing signed by the guarantor or his agent; so also does a representation or assurance relating to the character, conduct, credit, ability, trade, or dealings of another person to the intent that such other person may obtain goods or credit. The foregoing must be strictly distinguished from a promise to indemnify another for any loss

which might be experienced from a transaction entered into at the instigation of the promisor. In this case the promisor is held liable, regardless of there being written evidence respecting the contract or not.

Lands

Bald built a house, so as to make his vacant land productive. He met Stone on the street and Stone agreed to buy it for $12,500, paying $100.00 in cash. No receipt was given. The purchaser a few days later found a house which he could buy for $10,500. He therefore stated to Bald that he had not known that building restrictions existed on the land and he asked for his $100.00 deposit. The sale could not be enforced by Bald for two reasons—there were building restrictions on the land which Bald had not disclosed and there was no memorandum of the agreement signed by Stone or his agent. The payment of the $100.00 made no difference.

Agreement Not to be Performed in a Year

The following situation very frequently arises. Bill Jones hires with Farmer Lincoln for a year, commencing from the first of April, next, at $500.00 a year. Bill does not like his meals or the daylight saving; getting up almost as soon as he goes to bed is hard on his system. He only works two months, and leaves. Farmer Lincoln finds he has no valid contract, as an agreement not to be performed in the space of one year from the making thereof requires Bill's signature. Bill can doubtless force him to pay for the time worked, but if the contract were valid Bill would be bound to work his full time or go without any pay.

Necessaries

Ernest at nineteen bought a motorcycle for joy riding, promising to pay $250.00 for it, $25.00 in cash and his note for the balance. He became hard up and the seller could not get him to pay any more. If the motorcycle had been within the term "necessaries" the seller could have obtained a judgment, but as it was not a necessity for Ernest he went free. Being under twenty-one years of age he was incapable of contracting in the eyes of the law, except in the case of necessaries. Shortly after Ernest had attained the age of twenty-one years, he met the seller, who asked him again if he would pay for the motorcycle,

and Ernest promised to pay in two months, at which time he was to receive some money. Ernest forgot his promise, however, and did not live up to it. The seller was no better off with Ernest's promise made after his becoming of age, as the promise must be in writing, signed by him or his duly authorized agent.

Sale of Goods Over $40.00

Merchants occasionally have to contend with unscrupulous buyers and vice versa. It is, therefore, well to always keep in mind the requirements of our old friend, or old enemy as the case may be, the Statute of Frauds. Millions of dollars of business are done yearly without the Statute being complied with, but as a business precaution it is well to have a legal contract, if the sale or purchase is of goods, wares or merchandise of $40.00 or upward—have a written memorandum of the *bargain* signed by the parties or their lawfully authorized agents. The following two cases, the contentions in which are by no means exceptional, will serve to illustrate these points:

A fruit company's representative phoned an Italian fruit firm in Hamilton—"Do you want a car of bananas, eighths, $2.00 per cwt. f.o.b. seaboard?" "Yes, we will take a car, but ship them immediately." The representative wired his head office at New York to "book order for car bananas, eighths—S. & S. Hamilton—at $2.00 per cwt." Head office wired the representative, "Have booked order." By some unfortunate error in the office of the Canadian representative the latter wired S. & S. Hamilton: "Shipping your car to-morrow—Fruit Company." The order could not be filled, as at the seaboard it was found that a large part of the cargo had become damaged en route from Cuba and was unfit for shipment. S. & S. then sued for large damages for breach of the contract, but the Court said that it was a contract for the sale of goods, wares or merchandise for $40.00 or upward and that there was not a sufficient note or memorandum of the *bargain* signed by the party to be charged or

his agent. Nothing was given in earnest to bind the bargain or in part payment, nor had the buyer accepted part of the goods sold or actually received the same. The telegram "shipping your car to-morrow" was not a sufficient memorandum of the bargain. The "bargain" meant the names of the parties, the subject-matter and the terms of sale, and the telegram, being the only document signed, was not sufficient.

Again—An order was given to a Brick Company by a builder who was putting up a garage, for 25,000 hollow tile—$60.00 per M. The Brick Company had some on hand, but told the builder that it would have to make more tile to fill his order. In the builder's presence the Manager of the Brick Company dictated to his stenographer a letter to the builder confirming the order:

> J. B.
>
> We beg to confirm your order given us to-day for 25,000 hollow tile at $60.00 per M, delivery as ordered.
>
> BRICK COMPANY.

The letter was dispatched, but the Company never received any response from the builder and was unable to obtain from him delivery orders. Subsequently, the builder denied ever giving the order, stating that he merely asked for a quotation. The fact appeared to be that the builder had found it a little less expensive to build with a cheaper grade of brick. There was no enforceable contract, as there was no memorandum of the bargain signed by J. B. or his agent.

If the merchants involved in the foregoing cases had only known that contracts made for the sale of goods, wares, or merchandise of $40.00 and upward had to be in writing, except where part or all of the goods had been delivered, or where part of the purchase price had been paid, they would have escaped their subsequent difficulties.

CONTRACT

The object of Law is Order, and the result of Order is that men are enabled to look ahead with some sort of security as to the future.

Altho human action cannot be reduced to the uniformities of nature, men have nevertheless endeavored to reproduce by law something approaching to this uniformity. As the law relating to property had its origin in the attempt to insure that what a man has lawfully acquired he shall retain, so the law of contract is intended to insure that what a man has been led to expect shall come to pass; that what has been promised to him shall be performed.

Agreement is the expression by two or more persons of a *common* intention to effect their legal relations.

An essential feature of a contract is a *promise* by one party to another, or by two parties to one another, to do or forbear from doing certain specified acts. By a promise we mean an accepted offer as opposed to an offer of a promise. A further essential to every valid contract not under seal is that a reason or inducement must appear for the parties having given their assent to become bound to the terms as set forth in the contract. This need not be a monetary consideration but may be something given or done or promised to be given or done by the person or persons making the promise. In return the other party or parties to the contract either give or do or promise to give or do something in the future. If there is no consideration there is no reason for the contract, hence mere promises cannot be enforced.

An offer must be distinguished from a statement of intention; for an offer imports a willingness to be bound to the party to whom it is made. Thus, if A.

says to X., "I mean to sell one of my sheep if I can get $25.00 for it," this is a mere statement which does not admit of being turned into an agreement; but if A. says to X., "I will sell you whichever of my sheep you like to take for $25.00," we have an offer. An offer becomes a promise by acceptance; until acceptance it may be withdrawn, after acceptance its character is changed. If A. says to X., "I will sell you my sheep for $25.00," and X. says, "I will buy it for that sum," there is a promise by A. to sell and a promise by X. to buy, and a contract between the two is made. To make that sort of agreement, which results in contract, there must be (1) an offer, (2) an acceptance of *that* offer, resulting in a promise, and (3) the law must attach a binding force to the promise so as to invest it with the character of a legal obligation.

Every expression of a common intention arrived at by two or more parties is ultimately reducible to question and answer.

X. says to A., "Will you give me $5,000.00 for my house?" A. replies, "I will." A contract is made. But if A. says, "I will if you will put a new veranda on the front," there is no acceptance until X. agrees to A.'s terms. The acceptance must be of the terms offered or the matter remains open and no contract is made.

A. offered to sell a farm to X. for $5,000.00. X. said he would give $4,500.00. A. refused and X. then said he would give $5,000.00, but A. declined to adhere to his original offer and no contract resulted,

the Court saying the counter offer of $4,500.00 was a refusal of the first offer.

X. telegraphed to A., "Will you sell us Bumper Hall Pen? Telegraph lowest cash price, answer paid." A. replied by wire, "Lowest price for Bumper Hall Pen, £900." A. telegraphed, "We agree to buy Bumper Hall Pen for £900 asked by you." The Court said no contract was made, that A. in stating the lowest price which he would take was not accepting an offer but supplying information; that the third of the telegrams set out above was on offer by X.—not the less so because he called it an acceptance—and that this offer had never been accepted by A.

A. offered $1,450.00 for a property belonging to X. In accepting the offer, X. inclosed with the letter of acceptance a contract for signature by A. This document contained various terms as to payment of deposit, date of completion and requirements of title, which had never been suggested in the offer. There was no contract; the Court said it would be equally unfair to hold A. to the terms of acceptance and X. to those of the offer.

Where an offer to sell property was accepted "subject to the terms of a contract being arranged between the solicitors of the parties", no contract was made. The acceptance was not, in fact, more than an expression of willingness to treat.

An offer need not be made to an ascertained person, but no contract can arise until it has been accepted by an ascertained person.

The proposition is best understood by an illustra-

tion: The offer, by way of advertisement, of a reward for the rendering of certain services, addressed to the public at large, becomes a contract to pay the reward as soon as one individual accepts the offer by rendering the services, but not before.

Revocation

An offer may be revoked at any time before acceptance, unless the offer is under seal and there is a consideration for leaving it open till a specified time. The revocation to be operative must be communicated.

Acceptance

If a mode of acceptance is prescribed and the offeree departs from this, it is open to the offeror to treat the acceptance as a nullity.

Ehasin offered to buy flour of Henshaw, requesting an answer by the wagon which brought the offer. Henshaw sent a letter of acceptance by mail, thinking it would reach Ehasin more speedily. He was wrong. The United States Supreme Court held that Ehasin was entitled to refuse to purchase.

"It is an undeniable principle of the law of contract that an offer of a bargain by one person to another imposes no obligation upon the former, until it is accepted by the latter *according to the terms in which the offer* was made. Any qualification of or departure from these terms invalidates the offer unless the same be agreed to by the person who made it."

Checks Sent in Full Payment

C. and Company bought from P. of Liverpool a shipment of Egyptian onions. These were delivered, but C. and Company refused to pay the full price—$550.00—claiming the onions were of poor quality. C. and Company sent to P.'s agent in Montreal a check for $495.00, stated to be in full, and the agent sent it back to C. and Company, refusing to accept it in full. The action never went to trial, as P. would have been unable, without unwarranted expense, to prove that the onions when delivered were according to contract. His agent should have accepted the check on account, immediately notifying C. and Company that it was accepted only on account and not in full, and action could have been taken for the balance, if expense of such action was not prohibitive. It is not necessary or advisable to mark on the check in such a case "accepted in part payment" as the payee's bank might refuse to accept his endorsement.

It is to be noted, however, that P.'s agent sending the check back was by no means a bar to subsequent action, had it been possible to prove his claim and recover from the purchaser.

Interest

Due March 4, 1919. Walters Falls,
Sept. 1st, 1918.

Six months after date I promise to pay John Smith or order five hundred dollars at his office here. Value received.

Henry Irvine.

This note bears no interest till after the maturity, then at the legal rate; had it mentioned in the body

of the note—with interest at 7 per cent—it would carry interest at 7 per cent till its maturity only, March 4, 1919, and after maturity at the statutory rate, but if it mentioned "with interest at seven per cent *as well after as before maturity,*" or words of like import, it would carry 7 per cent interest. A mortgage or contract would be similarly construed.

Bonus Stock

The M. Chair Co., Limited, was doing a fair business. It needed more capital, so some of its then shareholders were asked to subscribe for more shares, payable 10 per cent on allotment and the balance when called from time to time, and the directors promised them 50 per cent of bonus stock for every share subscribed. Quite a number subscribed for new stock, as they thought, at bargain prices. The company before long got into financial difficulties and was wound up. It was then found that the bonus stock was not fully paid and the holders had to pay up the balance of their subscription—90 per cent, and 100 per cent of the bonus stock. It is a wise precaution to take, when accepting bonus stock, to see that it has been fully paid and not only supposed or said to be fully paid.

What the Business Man Gets from the Law

Thus it will be seen that in a hundred different ways the business man is in contact with the law. Some knowledge of the general principles of law he unconsciously absorbs thru his business experience, but that

experience may leave him without counsel or precedent in some important emergency. The legal profession has neither secrets to guard nor mysteries to shield. It can lose nothing thru the fact that the general principles of law are widely known. The business man's interest in the law is the same as in many other topics. He does not aspire to be a specialist, and ought not to do so, but he cannot but profit by a knowledge of general principles.

If thru his reading he gains nothing more than a clear perception of when he needs the services of the expert, the business man will have drawn great profit therefrom. He will have learned not only when but how to consult his legal adviser. He will have learned the importance of details; will know what is vital in the situation and will not unwittingly withhold information that may be of importance.

Disclose All Facts to the Attorney

The secretary-treasurer of a land company requested his solicitor to collect a claim of $10,500.00 from the Brown Syndicate, Limited. The solicitor asked him to send over the papers, but he did not consider this necessary, remarking, "They know all about it." In looking into the financial standing of the Brown Syndicate it appeared that it had no assets which could be realized upon, and all the shares were fully paid. Thereupon the solicitor again requested all the papers in connection with the matter. It then appeared that the contract had been signed by fifteen individuals and not by the Limited Company. Most

of the individuals were good financially, with the result that the solicitor had to change front and request the individuals to pay, and they were forced to do so without much difficulty. The secretary had not realized that the individuals were still liable, even tho their interest in the property had been conveyed to a Limited Liability Company.

JOHN JONES,
Attorney at Law,

DEAR SIR:

Will you please collect the enclosed account for plumbing supplies from Mr. John Smith, who lives at 15 Light Street? It has been standing a long time and I am afraid he is not worth much.

GEORGE BROWN.

No further information was given, but the solicitor requested some facts. Who owns the house? *It is in the wife's name.* Are there any judgments against the husband? Yes, the bailiff says there are several; the man promised to pay. What were the goods supplied, and for what house? Some pipes and taps for the Light Street house. A ray of light then dawned upon the merchant—perhaps he should have sought to make the wife pay. The lawyer took judgment against the *wife* and the amount was easily collected by garnisheeing the rent of the adjoining house, also owned by the wife.

Never fail to give your legal adviser a full and complete statement of the facts and all the writings bearing upon the subject-matter. Very often a letter or unsigned paper which may not appear important has a vital effect in the stubbornly fought lawsuit.

It is not advisable for the business man to be continually running to his lawyer in order to enlist his aid in securing imaginary rights. Indeed, real rights are oftentimes not worth fighting for thru the vexations of a suit at law. It should be the province of the business man's lawyer to endeavor at all times to keep him out of litigation, if it can be done with honor and profit to the client. To a busy business man litigation is a worry and source of annoyance and expense. There always has been, and will be, plenty of litigation, for many human beings, like nations, are pugnacious. There have always been wars, and it would seem, always will be; strip the veneer of civilization off man and the innate pugnacious spirit shows itself.

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